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No. 86-

Supreme Court, U.S.
FILED
MAR 27 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CONSUL, LTD.

Petitioner,

v.

TRANSCO ENERGY COMPANY, formerly known as TRANSCO COMPANIES, INC., and TRANSCONTINENTAL GAS PIPE LINE CORPORATION

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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SUPPLEMENTAL APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

C-82-574-WS

CONSUL, LTD.,

Plaintiff,

v.

TRANSCO ENERGY COMPANY, formerly known as TRANSCO COMPANIES, INC. and TRANSCONTINENTAL GAS PIPE LINE CORPORATION,

Defendants.

FILED

AUG 16 1985

MEMORANDUM

This case is before the court pursuant to two motions as follows: (1) motion by the defendant for judgment notwithstanding the verdict, or in the alternative, for a new trial, and (2) motion by plaintiff to transfer this case to the Western District of North Carolina pursuant to 28 U.S.C. § 1404(a), which provides: "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district of division where it might have been brought." This motion of the plaintiff relates to "alleged equitable relief" that the plaintiff contends it is entitled to.

The court having considered the record before it, including the pleadings, exhibits, evidence presented at trial, and argument of counsel, rules on the defendant's motion for JNOV as follows:

1. With reference to defendant's contention that it is entitled to JNOV on the theory that the plaintiff's evidence did not establish a relevant market sufficient for the case to be considered by the jury, the court is of the opinion that the motion should be allowed as to Holiday Creek Field as being a relevant market and denied as to Green Creek Field as being a relevant market.

2. Defendant contends that plaintiff failed to present any evidence of any injury caused by Transco. The court is of the opinion that this portion of the motion JNOV should be allowed in part and denied in part. The motion is allowed as to the jury award to Consul of $24,000 for the interruption of service to Public Service. This results by reason of the court's holding that Holiday Creek Field was not a relevant market area.

3. The court has reviewed the evidence presented at trial. From such review, the court concludes that there was sufficient evidence in the record from which a jury could find that plaintiff was damaged in the amount of $154,200. This amount is to be multiplied by three which give plaintiff total damages of $462,600. The court has allowed the motion JNOV with reference to $62,100 which was awarded for contracts entered into for the period between January 1, 1979 and February 1, 1979.

4. With reference to plaintiff's motion to transfer to the United States District Court for the Western District of North Carolina, a case was filed on May 13, 1985 entitled *Carolina Utilities Customers Associates, Inc., v. Transco Energy Co. and Transcontinental Gas Pipeline Corp.* Case No. C-85-309-M. Plaintiff, now in the case before this court, contends that there are certain similarities between the Western District case and the request for injunctive relief in this case. The court is of the opinion that there has not been any showing that the transfer and merger of the two cases in question would be of convenience to any of the witnesses or the parties, in the interest of justice, or

would save judicial time. Therefore, and the court in its discretion will deny the plaintiff's motion.

The court will enter judgment consistent with this memorandum in lieu of the Judgment entered on June 12, 1985.

/s/ RICHARD ERVIN
United States District Judge

August 26, 1985

Dec. 30, 1986

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 85-1729
85-1971
85-1988

CONSUL, LTD.,

Appellant,

versus

TRANSCO ENERGY COMPANY, ETC., *et al,*

Appellees.

On Petition for Rehearing with Suggestion for Rehearing In Banc.

ORDER

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Ervin, with the concurrence of Judge Widener and Judge Haynsworth.

For the Court,
/s/ JOHN M. GREACEN
Clerk